

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
AMBER SKIDMORE,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 2001SF0546
)	EEOC NO: 21BA18049
PAY DAY/CASH NOW, INC., d/b/a)	ALS NO: S-11858
AAA CHECK ADVANCE and WILLIAM)	
SCOTT ISOM,)	
)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-0101 et seq.). A public hearing was held before me on October 29 and 30, 2003 in Mt. Vernon, Illinois. The parties have filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

Contentions of the Parties

In the instant Complaint, Complainant, Amber Skidmore, asserts that she was the victim of sexual harassment when Respondent Isom touched and pinched her buttocks, breast and crotch on a daily basis and subjected her to sexually offensive terms and comments. She also maintains that she was forced to quit her employment due to the hostile work environment. Respondents, however, submit that Complainant was not subjected to a hostile work environment, and that Complainant left her employment for reasons unrelated to any alleged misconduct in the workplace.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On June 15, 2000, Respondent Pay Day/Cash Now, Inc. (hereinafter referred to as Pay Day) hired Complainant as a loan officer in its Carbondale, Illinois office located at

a shopping mall. At all times during Complainant's tenure at Pay Day, Respondent William Isom was the store manager and supervisor of Complainant. Complainant was eighteen years old at the time of her hire.

2. At all times during Complainant's tenure at Pay Day, the office itself had a counter in the front of the store that was separated from the rest of the office by a picket fence. Behind the fence was an area containing both Complainant's and Isom's desks, as well as a table where Complainant and Isom shared a single computer and its printer. A half-wall separated the back area of the office from the area containing both Complainant's and Isom's desks.

3. At all times pertinent to this Complaint, Pay Day was in the business of making short-term money loans that were secured by either a personal check or a car title. Typically, when first-time customers came to the office, Isom would make the initial decision to accept the loan application, especially when the source of the collateral was the customer's vehicle. However, once the customer would come in to renew the loans, Complainant was given authority to grant the customer's request to renew the loan or require that the customer pay down on the loan. In this regard, one of Complainant's duties was to keep track of delinquent customers by telephone.

4. Throughout Complainant's tenure at Pay Day, there were periods during the workday when there was nothing to do that was related to the loan business. Moreover, several of Isom's friends would make appearances at the office throughout the workweek. Complainant also invited her sixteen-year-old sister, Ashley, and some of Complainant's friends to visit during the workday.

5. Beginning on June 15, 2000 and continuing throughout Complainant's tenure at Pay Day, Complainant and Isom would use on occasion sexual banter and sex-based jokes in the office. Occasionally, the banter would take the form of Isom complaining in a joking way about the lack of sex that he was getting from his wife. Complainant also

occasionally talked about her sexual relationship with her boyfriend and about sexual situations she allegedly witnessed at parties. Both Complainant and Isom relayed their stories and jokes in front of their friends who came by to visit.

6. Throughout her tenure at Pay Day, both Complainant and Isom explored the Internet on the computer during slow times of the workday. Additionally, both Complainant and Isom sought out and viewed websites containing pornography.

7. On December 4, 2000, someone other than Complainant or Isom printed material from a website advertising a penis enlargement program and then left the printed materials near the office printer.

8. On January 23, 2001, Complainant and Isom had an argument about what Isom believed to be Complainant's excessive requests for time-off.

9. Prior to January 24, 2001, Isom orally told Complainant that she needed to improve on tracking clients who were delinquent on their payments. Isom also told Complainant during this time that he did not want her to doodle on office documents and that she needed to cut down on her personal calls.

10. On January 24, 2001, Complainant requested and took some more time off. Later in the day, Isom sent the following e-mail with the subject line "Get it Together!!! or Get it out!!!" to Complainant's e-mail address:

"Dear Miss Amber:

Just a letter to inform you that activities and actions like what were exhibited today will not be tolerated in the future. You have taken the correlation [sic] between employer-employee and employer/friend-employee-friend and confused [sic] the terminology of their meanings and definitions. It is true that you are my friend, but in this situation and relationship, I must remain above and foremost your boss. And must treat every situation non[-]biased. So if you intend on leaving work again the way and in the attitude that you did today, there will [be] no future for you then after. If you could put yourself in my position for just a minute, you might be able to comprehend just where I'm coming from. I don't know any other job that would tolerate so much "off-time" and that would give you the freedom to take off early or all together at a moment's notice and the cellular phone is not to be brought indoors or is not to be powered on any longer when at work. You get a lunch hour break, you can make your personal calls during this time. The amount of calls and especially the length of your conversations will be limited and the duration minimal. Your doodling

on everything that does not move is to be stopped. I picked up a paper that I had some important information written on pertaining to insurance and saw Amber Lea Dawn... and a couple of flowers too. There were some price sheets that were copied off the internet for my parents sitting next to the printer, same thing. If you have that much time that all you can find to do is draw, then we may have to do a time decrease or a task increase. I am willing to work with you and be as lenient [sic] as possible, but when I start feeling like this is being taken for granted and abused [sic] as in the past, I am left with no choice, but to lay down some rules that may have been overlooked.

As for today as an example, I'd already been informed that you needed to leave early for your grandmother's B'day, but then it just built and like we discussed yesterday about your ways of skating all around avoiding having to lie or not be questioned to have to lie or not, you slipped this blood-test in, the out of nowhere, here comes lunch dates, and pussy-footin' around not asking if you could just have the rest of the day off, making comments like, 'when I get back from the adolescent center, I have to change into these dress clothes for going out to dinner'. That is why I got so pissed, I would have rather you of come right out and ask for the rest of the day off after lunch or even the whole day as long as it was not an hour before opening or so. Then for you to leave the way you did, I was never so pissed at a co-worker th[a]n then. I had to wait all day before sending this so I didn't really explode and not get the correct meaning out but in a humanistic fashion.

So there, it is out and I have said my peace. You can comment and discuss in person if you want, but it will have to be Friday. We are leaving early tomorrow for Laura's doctor appt. in StL.

P.S.1) Don't let Glen mess with the computer while I'm gone. I'd prefer no one other than you getting on the internet. He might erase something else that I had saved.

P.S.2) How was your day at the Mall today with Amy or whoever?"

11. Sometime between Complainant's receipt of Isom's January 24, 2001 e-mail and January 27, 2001, Complainant decided to quit her job at Pay Day to go work for Tri-County, as an aide for special education children. In this job, which was also in Carbondale, Illinois, Complainant received approximately five fewer hours per week and \$.50 less per hour than what she received at Pay Day, with a promise of medical benefits after one year. (Complainant had not received any medical benefits at Pay Day by this time.) In making the decision to leave Pay Day, Complainant was upset with the criticisms made by Isom in his January 24, 2001 e-mail and believed that she was being treated unfairly since Isom was able to come and go as he pleased, take personal phone calls and visit with his friends in the office.

12. On January 27, 2001, Complainant wrote Isom the following responsive e-mail with the subject line "GOT IT TOGETHER AND GOT OUT":

"dear mr. scott,

I AM DEEPLY SORRY BUT I AM NO LONGER GOING TO WORK FOR YOU AS OF MONDAY I WILL NOT BE THERE. I FEEL THIS IS JUST THE RIGHT THING FOR ME TO DO FOR RIGHT NOW. I HAVE ENJOYED MY JOB AT AAA BUT I FEEL THAT THE EMPLOYER/EMPLOYEE THING WASN'T HAPPENING THE WAY THAT IT WOULD AT ANY OTHER JOB I WOULD LIKE TO THANK YOU FOR HIRING ME I HAVE ENJOYED IT I THINK OF IT AS [A] LEARNING EXPERIENCE AND I KNOW IT WAS NOT REALLY FOR ME I AM SORRY TO JUST GET UP AND LEAVE ON THE SPOT SO SOON BUT YOU KNOW I AM SURE YOU CAN ALWAYS FIND SOMEONE ELSE AS YOU HAVE ALWAYS TOLD ME THANKS FOR EVERYTHING YOUR FRIEND, AMBER SKIDMORE"

13. Complainant worked at Tri-County for approximately six days. On February 2, 2001, Complainant wrote the following e-mail to Isom with the subject line "hey":

"hey scott i just wanted to email you to say hello and that i am really sorry things worked out the way they did i do miss you i do still care about you as a friend and always will and i would love to work for you again but only if me and you can actually sit down and work things out for real and i mean you probably don't want me to come back which that is very understandable by all means because you probably have already hired someone else which if that is the case good for you! i wish the best to you and to the family how is laura i hope she is okay i mean scott for real we have been threw [sic] a lot of shit so i hope you understand where i am coming from in a way if not okay cya around sometime thanks for everything hugs and kisses amber"

14. After Isom read Complainant's February 2, 2001 e-mail, Complainant and Isom had a meeting where Isom told Complainant that she could have her job back if she cut-down on her personal calls, made more calls to clients, and performed better in the day-to-day tasks. Complainant resumed her job at Pay Day on February 3, 2001.

15. At some point in March of 2001, Complainant told her father that Isom had grabbed her breast, although the incident did not happen.

16. At some point in March of 2001, Complainant asked Isom if he would loan her some money so that she could fix the transmission on her car. Isom refused Complainant's request because he believed that Complainant's used car was not worth the repairs that she intended to make and because he believed that Complainant might not pay him back given her sudden departure in January of 2001.

17. Complainant was angry with Isom for refusing her money request because Isom had previously made interest-free loans to some of his friends. At some point subsequent to Isom's decision not to loan Complainant money, Complainant told Glen Wagner that she would make Isom pay for his decision.

18. On April 3, 2001, Complainant's father telephoned Complainant to say that he had obtained the telephone number of an attorney whom Complainant should call and let know what Isom "was doing to her."

19. On April 5, 2001, Complainant spoke to a paralegal at the attorney's office and made several claims that Isom had abused her in the workplace. At that time the paralegal advised Complainant to quit her job. Complainant told Isom that she was sick and left the workplace. Complainant did not ever return to Pay Day.

20. On April 9, 2001, Complainant went to her attorney's office and asserted for the first time that Isom had subjected her to forced anal intercourse in the office on September 25, 2000. Complainant also made other claims that Isom had routinely touched her in a sexual manner and had verbally abused her in the workplace.

21. After conferring with her attorney about her claim against Isom, Complainant went to the police station on April 10, 2001 and made a statement about the alleged September 25, 2000 incident. In the statement, Complainant maintained that: (1) around closing time on September 25, 2000, and about seventeen days after she had undergone gallbladder removal surgery, Isom grabbed her by the hair, took her to the back area of the office, forced her over a desk, and "stuck his penis in my butthole until he was precumming;" (2) after Isom exited to the office bathroom, Complainant escaped to her car; (3) Isom followed her home; (4) she returned to work the next day when Isom acted as if nothing had happened; and (5) on the following day, Isom took out a gun that he kept at the office, loaded the gun in front of her, and told her that she better not tell anyone about the anal rape because "some people take deep secrets to their grave." Complainant also accused Isom in

her statement of: (1) forcing her to view pornographic sites on the Internet; (2) breaking her bra; and (3) getting his gun out on a daily basis and on occasion pushing Complainant's face up to his gun.

22. On April 14, 2001 Complainant sent a note to Isom stating: "Amber [S]kidmore no longer works at aaa check advance...Here is your key to the business... AMBER SKIDMORE".

23. On May 8, 2001, Complainant filed a Charge of Discrimination alleging that she was the victim of sexual harassment and a constructive discharge.

24. Pay Day ceased doing business as of March of 2002.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent Pay Day/Cash Now, Inc. d/b/a AAA Check Advance is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Respondent Isom is an "employee" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

4. Complainant failed to establish a *prima facie* case of sexual harassment in that she failed to show that she subjectively viewed as unwelcome the conduct occurring in the workplace that was actually established by the record.

Determination

The Complaint in this matter should be dismissed with prejudice because Complainant failed to establish a *prima facie* case of sexual harassment.

Discussion

Section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)) provides that it is a civil rights violation "[f]or any employer [or] employee to engage in sexual harassment." The

Act further defines sexual harassment as “any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when...(3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” (775 ILCS 5/2-101(E).) The Commission has declared that there is no “bright line” test for determining what behavior will lead to liability under a sexual harassment theory and has charged the administrative law judge with assessing not only what was done in the workplace, but how it was done in relationship to the total working environment. (See, **Robinson v. Jewel Food Stores**, 29 Ill. HRC Rep. 198, 204 (1986).) According to the United States Supreme Court in **Harris v. Forklift Systems, Inc.**, a hostile environment arises “when the workplace is permeated with discretionary intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” (**Harris**, 114 S.Ct. 367, 370 (1993).) The Commission has used a similar standard for evaluating sexual harassment claims under the Human Rights Act. See, **Kauling-Schoen v. Silhouette American Health Spa**, ___ Ill. HRC Rep. ___ (1986SF0177, February 8, 1993), slip op. at p. 13.

Before examining whether Complainant has established a *prima facie* case of sexual harassment, I must first determine what actually happened in the workplace, for indeed, credibility is typically the heart of any sexual harassment case. (See, **Camden v. AAA-Chicago Motor Club**, 26 Ill. HRC Rep. 2 (1986).) Here, that maxim is altogether true since the record reveals that, aside from an occasional joke by Isom about the state of his sex life with his wife, the parties agree to little of what Complainant asserts happened to her at the Pay Day office. To illustrate, the following is a summarized listing of what Complainant asserts is what she experienced during her employment:

(1) a September 25, 2000 brutal anal rape that occurred in the back area of the office;

(2) periodic threats by Isom warning Complainant not to talk about the alleged rape and repeated references to his gun that was kept in the office;

(3) daily touchings by Isom of her breast, crotch area and hair beginning on September 26, 2000 and lasting until January 24, 2001, and then resuming from February 3, 2001 until April 5, 2001;

(4) occasional incidents where Isom would call her a bitch, slut, cunt, or a whore, and where Isom would grab her by the hair and force her to view pornographic websites on the office computer;

(5) occasional requests by Isom for “blow jobs”; and

(6) occasional reminders by Isom that he was going into the office bathroom to masturbate.

Indeed, if any of these allegations were true, I would agree with Complainant that she has established a *prima facie* case of sexual harassment. The problem, though, is that I do not believe that Complainant is credible based on the weight of the evidence, the documents admitted in the record, as well as her demeanor on the witness stand. Beginning with the alleged rape that Complainant insists occurred on September 25, 2000, I initially note that Complainant did not go to the police with her accusations about the alleged rape until April 10, 2001, and then went only after consulting with her attorney about her claim against Respondents. While Complainant testified that she was too afraid of Isom to seek protection from the police and thought that Isom would harm her if she ever left the employment of Pay Day, Complainant did not explain how these alleged fears were overcome in April of 2001, when she finally made her statement to the authorities.¹ Similarly, this alleged fear did not stop Complainant from actually leaving Pay Day in January of 2001, and Complainant has not adequately explained why she did not report to the police or talk to anyone else about the alleged rape at that time if in fact it actually occurred.

¹ The record is silent as to any criminal disposition of Complainant's charges against Isom. Respondent attempted to introduce a letter purportedly from the local States Attorney's Office indicating that the Office would not be filing charges against Isom, but the letter was excluded from the record based on relevance and the hearsay rule.

Additionally, documentary evidence in the record casts doubt on Complainant's contention that she left Pay Day in January of 2001 on account of the alleged sexually hostile environment in the workplace. Specifically, a review of Isom's January 24, 2001 e-mail indicates that he was upset with a number of work-related job performance issues he had with Complainant at that time, including Complainant giving false reasons for asking for time off. Indeed, contrary to Complainant's suggestion that Isom was somehow forcing her to remain employed at Pay Day after the alleged brutal rape, the subject line of Isom's e-mail telling Complainant to "get it together or get out" was essentially inviting her to leave if she did not conform to his expectations with regard to her job performance. A review of Complainant's January 27, 2004 e-mail only reinforces the notion that the dispute between Complainant and Isom in January of 2001 was related only to job performance issues given her reference in her e-mail to the "employer/employee thing" that she viewed was "not happening" at Pay Day, her acknowledgement that Isom could always find someone else to do her job, as well as her subject line indicating that she "got it together and got out." Moreover, her reference in her e-mail to Isom as her "friend" and her indication that she enjoyed her work at Pay Day also militate against a finding that Complainant had been the victim of a brutal rape or any other daily form of sexual harassment that she alleged occurred over a four-month period of time prior to the e-mail.²

Complainant's quick return to Pay Day after working only a week at Tri-County also places into question whether Complainant was the victim of sexual harassment as alleged by her. Complainant explained that she felt compelled to return to Pay Day because: (1) the pay at Tri-County was less than at Pay Day; (2) she had to commute to Carbondale, Illinois

² Complainant's husband testified to an alleged incident that occurred around Christmastime, 2000, when according to Complainant's husband, Complainant told him that Isom had snapped her bra and eventually undid and reached down her pants. I doubt, though, that the incident ever occurred since Complainant did not mention it in her testimony, and she repeatedly insisted that she had told no one prior to January 24, 2001 about any alleged incident of sexual harassment. See, Tr. Vol. 1, pp. 43, 44 and 50.

from her DuQuoin, Illinois home to work at Tri-County; and (3) her parents had otherwise pressured her into returning to Pay Day. However, both Pay Day and Tri-County were located in Carbondale, Illinois, and thus I doubt whether there were any significant savings in commuting costs as alleged by Complainant. More problematic with Complainant's explanation, though, is the notion that it was worth the increase of \$.50 per hour plus a hand full of extra hours to come back to a work environment at Pay Day where, according to Complainant, she was brutally raped and physically and verbally abused on a daily basis for over a four-month period of time. This explanation defies logic, and is something that I cannot believe is true. Indeed, more reflective of her true mindset at the time is Complainant's February 2, 2001 e-mail to Isom, where she states that she: (1) misses and still cares for him; (2) still thinks of him as a friend; (3) would "love to work" for him again; and (4) prefaces her name with "hugs and kisses". In this respect and for all of the above reasons, I find that no brutal rape or daily incidents of other alleged sexually offensive physical touchings or verbal abuse ever occurred at Pay Day prior to her return to work on February 3, 2001.³

What then can be said about Complainant's remaining allegations (which concern continued daily comments of a sexually graphic nature, as well as continued daily touchings of her breast, crotch and hair, including forced viewings of pornographic websites and Isom's gun) that Complainant insists took place upon her return to Pay Day in February of 2001? In **Borling and Wildwood Industries, Inc.**, ____ Ill. HRC Rep. ____ (1988SF0355, January 6, 1995), the Commission addressed a similar question where the record showed that the complainant and her husband had manufactured a graphic allegation of sexual conduct that simply had not occurred. There, the Commission found that the administrative law judge

³ At the public hearing and in her brief, Complainant asserts that Isom somehow altered her e-mail to include statements that she did not make. However, Complainant provides no support for these assertions, and a review of the e-mail shows a consistency in format and tone that does not suggest an alteration.

could appropriately make negative credibility findings against a complainant on the remaining factual disputes based upon the complainant's willingness to fabricate a graphic allegation of sexual conduct. (Borling, slip op. at p. 15.) Here, I too find that Complainant's apparent willingness to fabricate a story concerning a brutal rape and other allegations of sexual and verbal abuse renders her remaining allegations unbelievable.

Complainant, though, testified that she told her father about an incident that occurred in March of 2001, when Isom allegedly grabbed her breast, and that her father eventually contacted an attorney so that she could talk about the circumstances of her employment. However, while Complainant may have told her father about the alleged incident, this testimony is persuasive only if one believes that Complainant was telling her father the truth about the alleged March, 2001 incident. Moreover, as noted above, Complainant has already demonstrated that she was not telling the police the truth when she made her April 10, 2001 statement accusing Isom of a brutal rape. Thus, given my prior finding with respect to Complainant's credibility, and given Glen Wagner's otherwise credible testimony regarding Complainant's anger at Isom for not loaning her money for car repairs during this same timeframe, it is more likely that Complainant fabricated this incident as well.

Finally, I note that Complainant's teen-aged sister Ashley gave some support to Complainant's assertion that Isom used sexually offensive terms towards Complainant in the office. Specifically, Ashley testified that she heard Isom call Complainant "cunt, slut, bitch and whore" and would pull Complainant's hair without reason. However, Ashley did not place any specific dates as to when these words/acts were uttered or done. Moreover, she acknowledged during cross examination that she was not particularly bothered about what she was allegedly seeing or hearing at the office, and that she did not report any of the alleged incidents to her parents or anyone else. Therefore, under these circumstances and based on her admitted close relationship with Complainant, I doubt that Isom actually

subjected Complainant to the above sexually charged comments as alleged by Complainant and her sister.

Therefore, when stripped of Complainant's allegations regarding the offensive verbal and physical touchings by Isom, what remains of Complainant sexual harassment case is a claim that Isom viewed and downloaded pornographic websites while at the worksite⁴, and that Isom and his friends occasionally told sexually related jokes and stories in her presence during office hours. Indeed, Isom generally did not dispute Complainant's factual contentions in this regard. However, Complainant also viewed pornographic websites on the Internet and told sexually related jokes and stories to Isom and others in the workplace. Accordingly, while being exposed to pornographic websites and sexually offensive jokes and stories can create a hostile work environment under certain circumstances, I cannot find that Complainant subjectively found this conduct to be "unwelcome" for purposes of establishing a sexual harassment claim where the record reflects that she also actively participated in the same activities. (See, also, **Gehlbach and State of Illinois, Department of Corrections**, ___ Ill. HRC Rep. ___ (1995SF0694, April 29, 1999)). As such, I find that Complainant has not established a *prima facie* case of sexual harassment arising out of her employment at Pay Day.

Recommendation

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Discrimination of Amber Skidmore be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 24TH DAY OF SEPTEMBER, 2004

⁴ I do not agree with Complainant, though, that Isom physically forced her to view pornography on the websites.

